## REMARKS/ARGUMENTS

A Notice of Appeal in this application was submitted October 4, 2006. Petition was thereby made under the provisions of 37 CFR 1.136(a) for an extension of three months of the period for response to the Office Action in the Amendment after Final Action submitted October 5, 2006, along with authorization to charge the prescribed fee to our deposit account.

The Examiner considered that newly-submitted claims 8 to 12 were directed to an invention that is independent and distinct from the invention originally claimed and withdrew those claims from consideration. These claims now have been deleted without prejudice to file a continuation application directed to such claims.

The Examiner rejected claims 1, 6 and 7 under 35 USC 102(a) as being anticipated by either one of "New Technology Isolate Canola Protein" article ("Food Engineering") or Asia Pacific Industry article ("Asia Pacific") or rejected under 35 USC 102(b) or rejected under 35 USC 102(b) as being anticipated by GB 2077739.

Claim 7 was dependent on claim 3 and no rejection has been made of claim 3 on this prior art ground. Accordingly, it cannot be seen the reason to include claim 7 in this rejection.

The Examiner's remarks refer to soy protein although the claims are specifically directed to canola protein. It is presumed that this is mere clerical error and that the Examiner intended to refer to canola protein.

Claim 7 has been rewritten in independent form and claim 5 has been made dependent on claim 7. Claims 1 to 4 and 6 have been deleted. Having regard to the prior dependence of claim 7 on claim 3, not rejected on this ground, it is submitted that the now pending claims are patentable over the prior art. Accordingly, it is submitted that the rejection of claims 1, 6 and 7, insofar as they remain in the

application and in their amended form, under 35 USC 102(a) as being anticipated by either of the articles or under 35 USC 102(b) as being anticipated by GB 2,077,739, should be withdrawn.

The Examiner rejected claims 4 and 5 under 35 USC 103(a) as being unpatentable over the same references as applied above. Claim 4 has been deleted and claim 5 has been amended to be dependent on claim 7, not the subject of this rejection. Accordingly, it is submitted that the rejection of claims 4 and 5, insofar as they remain in the application and in their amended form, under 35 USC 103(a) as being unpatentable over the same references as applied above, should be withdrawn.

The Examiner rejected claims 1, 6 and 7 under 35 USC 103(a) as being unpatentable over either one of Cameron et al or Murray et al.

The Examiner's remarks refer to soy protein although the claims are specifically directed to canola protein. It is presumed, as discussed above, that this is mere clerical error and that the Examiner intended to refer to canola protein.

As discussed above, this rejection does not include rejection of claim 3 and claim 7 was dependent on claim 3. It is not seen, therefore, how claim 7 can be rejected on this ground. Further, as discussed above, claim 7 has been rewritten in independent form. Having regard thereto, it is submitted that claim 7 is patentable over the prior art and hence the rejection of claims 1, 6 and 7 under 35 USC 103(a), insofar as they remain in the application and in their amended form, as being unpatentable over either one of Cameron et al or Murray et al, should be withdrawn .

The Examiner rejected claims 1 to 7 under 35 USC 101 as claiming the same invention as US Patent No. 7,001,900. Reconsideration is requested having regard to the following discussion.

The claims pending herein and those of US Patent No. 7,001,990 are not equal in scope. The claims of US Patent No. 7,001,990 relate to a food composition in which the at least one component providing functionality in the food composition is at least partially replaced by a substantially undenatured canola protein isolate having a protein content of at least about 90 wt% (N x 6.25) on a dry weight basis. The present claims are specifically directed to a canola protein fortified beverage.

In USP 7,001,990, the canola protein isolate is defined as a blend of two different canola protein isolates, one consisting predominantly of the 7S protein and the other consisting of predominantly of the 2S protein. The claims of the present application specify only the latter canola protein isolate, being a dried supernatant from the settling of a solid phase from a dispersion of canola protein micelles.

Accordingly, it is submitted that claims 1 to 7, insofar as they remain in the application and in their amended form, do not constitute a double patenting under 35 USC 101 of claims 1 to 9 of US Patent No. 7,001,990. It is submitted that the respective claims are directed to different inventions and the rejection should be withdrawn. The Examiner may consider there to be an obviousness-type double patenting, but that is not the rejection under consideration.

The Examiner provisionally rejected claims 1 to 7 under 35 USC 101 as claiming the same invention as claims 1 to 7 of Application No. 10/384,699. This is a provisional rejection since Application No. 10/384,699 has not yet been patented. Reconsideration is requested having regard to the following comments.

The claims of this application has been limited to a protein beverage (claim 7). The claims of Application No. 10/384,699 do not claim a protein beverage. Hence the rejection should be withdrawn. The Examiner may consider there to be an obviousness-type double patenting, but this is not the rejection under consideration.

In the Advisory Action dated October 20, 2006, the Examiner indicated that the Amendment after Final Action dated October 4, 2006 did not place the application in condition for allowance because the inclusion of the recited claims in view of the changes in claims to Application No. 10/384,699 require the consideration of a provisional obviousness-type double patenting rejection.

Submitted herewith is a Terminal Disclaimer disclaiming the term of the patent to be granted on copending Application No. 10/384,699 signed by an attorney-of-record which may extend beyond the term of the patent to be granted on this application. Authorization to charge the prescribed fee to our deposit account is enclosed.

It is submitted that, with the entry of the Terminal Disclaimer, there is no potential rejection of the claims of this application as an obviousness-type double patenting of the claims of copending Application No. 10/384,699 and hence this Second Amendment after Final Action should be entered.

The Examiner provisionally rejected claims 1 to 3, 6 and 7 under 35 USC 101 as claiming the same invention as that of claims 35 to 38 of copending Application No. 11/086,458. Although this is a provisional rejection since the conflicting claims have not in fact been patented, reconsideration is requested, having regard to the following comments.

The claims of this application are directed to a food composition which is a canola protein isolate fortified beverage formulated from a substantially undenatured canola protein isolate having a protein content of at least about 90 wt% as determined by Kjeldahl nitrogen x6.25 on a dry weight basis. The canola protein isolate is a dried concentrated supernatant from the settling of a solid phase of an aqueous dispersion of canola protein micelles.

The claims 35 to 38 of copending Application No. 11/086,458 are product-by-process claims directed to the canola protein isolate from concentrated

supernatant from the settling of a solid phase from an aqueous dispersion of canola protein micelles.

The respective claims are not of the same scope and do not claim the same invention. The claims of Application No. 11/086,458 are directed to a specific product while the claims of this application are directed to a food composition which is a canola protein isolate fortified beverage.

In the Final Action, the Examiner comments that:

> "It should be noted.... that, although the claims of 11/086,458 pertain to the isolate and not a food composition, it is considered to fall within the same scope as the isolate itself may be considered a food composition."

However, as noted above, applicants claims define a food composition comprising a canola protein fortified beverage.

Accordingly, it is submitted that claims 1 to 3, 6 and 7, insofar as they remain in the application and in their amended form, are not open to provisional rejection under 35 USC 101 as claiming the same invention as that of claims 35 to 38 of copending Application No. 11/086,458 and hence the rejection should be withdrawn.

The Examiner provisionally rejected claims 1 to 3 under 35 USC 101 as claiming the same invention as that of claims 1 to 5 of copending Application No. 10/493,023. The rejection is a provisional one since the claims have not yet been patent. The Examiner may wish to note that it is intended to abandon Application No. 10/493,023 in view of the grant of US Patent No. 7,001,990.

The Examiner provisionally rejected claims 4 and 5 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 35 to 38 of copending Application No. 11/086,458 or claims 1 to 5 of copending

Application No. 10/493,023. As noted above, it is intended to abandon Application No. 10/493,023.

With respect to Application No. 11/086,458, in the interests of progressing the prosecution of this application, submitted herewith is a Terminal Disclaimer, signed by an attorney-of-record, disclaiming the term of the patent to be granted on this application which may extend beyond the term of the patent to be granted on US Application No. 11/086,458. Authorization to charge the prescribed fee to our deposit account is enclosed. In the Advisory Action, the Examiner noted that the Terminal Disclaimer had been entered.

Having regard to the submission of the Terminal Disclaimer and Abandonment of Application No. 10/493,023, it is submitted that the provisional rejection of claims 4 and 5 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 35 to 38 of copending Application No. 11/086,458 or claims 1 to 5 of copending Application No. 10/493,023, should be withdrawn.

Entry of this Amendment after Final Action is requested, in that the application thereby is placed in condition for allowance. In the event the Examiner considers one or more ground of rejection to remain, it is submitted that the Amendment nevertheless should be entered, since the issues for appeal are reduced and/or the claims are placed in better condition for appeal.

In the event the Examiner believes one or more grand of rejections remain or a potential new ground of rejection arises, the Examiner is urged to call the applicant's representative, Mr. Michael I. Stewart, at the number given below with a view to resolving any remaining issues.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,

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